



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2013-0021

RIN 1625-AA00

Safety Zones; Hawaiian Island Commercial Harbors, HI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing nine (9) permanent safety zones encompassing Hawaii's commercial harbors (Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui and Kawaihae and Hilo on the Island of Hawaii). The purpose of these safety zones is to expedite the evacuation of the harbors in the event a tsunami warning is issued for the main Hawaiian Islands.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule will be enforced when the Captain of the Port, Honolulu issues the order to evacuate any or all of Hawaii's nine commercial harbors in response to a tsunami

warning. A written notice will be issued and a radio broadcast will be made when the Captain of the Port issues the evacuation order. This final rule will be enforced until the Captain of the Port lifts the evacuation order.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0021. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Scott O. Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522-8264 (ext. 3352), email Scott.O.Whaley@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

A. Regulatory History and Information

The Coast Guard met with industry partners, commercial mariners, and recreational boaters during the creation of this rule. The Coast Guard then published a Notice of proposed rulemaking on May 17, 2013. No public meeting was requested and none was held. The Coast Guard received a total of one (1) comment during the notice and comment period which is addressed below.

B. Basis and Purpose

The statutory *basis* for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act. A safety zone is a water area, shore area, or water and shore area, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels.

The *purpose* for this rule is to evacuate and close Hawaii's commercial harbors, collectively or individually, when a tsunami warning has been issued, in order to minimize the amount of vessel and port damage and a potential harbor blockage from a tsunami's destructive forces.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received a total of one comment on the referenced Notice of proposed rulemaking published May 17, 2013. What follows is a review of, and the Coast Guard's response to, the issues and questions that were presented by this commenter concerning the Notice of proposed rulemaking.

The commenter recommended defining the boundary of each safety zone. In response to this comment, latitude / longitudes have been included for each individual safety zone as detailed in the "Location" section of this rule.

D. Discussion of Final Rule

This rule will create safety zones encompassing each of Hawaii's commercial harbors. In the event a tsunami warning is issued, the Coast Guard will enforce these safety zones, closing those harbors within the anticipated impact area of the tsunami. When the safety zones are activated for enforcement, no vessels will be permitted to enter the closed harbors. Enforcement of these safety zones will also trigger an immediate evacuation of commercial vessels from the closed harbors. Once the threat has passed and harbors have been assessed as safe for reentry and commercial navigation, the safety zones will be deactivated allowing vessels to transit the harbors in accordance with already established regulations.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. These safety zones will only be activated for enforcement in the event the state of Hawaii is issued a tsunami warning for the safety of lives and property.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. These safety zones would be activated, and thus subject to enforcement only when a tsunami warning is issued for the Main Hawaiian Islands. Once the threat has passed and harbors have been assessed as safe for reentry, the safety zones will be deactivated allowing vessels to transit the harbors in accordance with already established regulations.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER

INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that

this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule will evacuate commercial harbors which anticipate tsunami impact.

This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165. 14-1414 to read as follows:
§ 165. 14-1414 Safety Zones; Hawaiian Islands Commercial Harbors; HI.

(a) Location. The following commercial harbors are safety zones:

(1) All waters of Nawiliwili Harbor, Kauai inland from a line drawn between 21° 56' 58"N, 159° 21' 28"W and 21° 57' 11"N, 159° 21' 10"W;

(2) All waters of Port Allen, Kauai immediately adjacent to the Department of Transportation commercial pier (located at $21^{\circ} 53' 59''\text{N}$, $157^{\circ} 35' 21''\text{W}$) extending out to 100 yards from the piers faces;

(3) All waters of Barber's Point Harbor, Oahu inland from a line drawn between $21^{\circ} 19' 30''\text{N}$, $158^{\circ} 07' 14''\text{W}$ and $21^{\circ} 19' 18''\text{N}$, $158^{\circ} 07' 18''\text{W}$;

(4) All waters of Honolulu Harbor, Oahu inland from a line drawn between $21^{\circ} 17' 56''\text{N}$, $157^{\circ} 52' 15''\text{W}$ and $21^{\circ} 17' 45''\text{N}$, $157^{\circ} 52' 10''\text{W}$;

(5) All waters of Kaunakakai Harbor, immediately adjacent to the Interisland Cargo Terminal or Ferry Terminal Pier out to 100 yards of the west face of the pier;

(6) All waters of Kaumalapau Harbor, Lanai inland from a line drawn between $20^{\circ} 47' 10''\text{N}$, $156^{\circ} 59' 32''\text{W}$ and $21^{\circ} 47' 01''\text{N}$, $156^{\circ} 59' 31''\text{W}$;

(7) All waters of Kahului Harbor , Maui inland from a line drawn between $20^{\circ} 54' 01''\text{N}$, $156^{\circ} 28' 26''\text{W}$ and $20^{\circ} 54' 02''\text{N}$, $156^{\circ} 28' 18''\text{W}$;

(8) All waters of Kawaihae Harbor, Hawaii immediately adjacent to commercial piers 1 and 2 extending out to 100 yards from the piers faces.

(9) All waters of Hilo Harbor, Hawaii immediately adjacent to commercial piers 1 and 2 extending out to 100 yards from the piers faces.

(10) The activation of these safety zones may include any combination of these harbors, or all of these harbors, dependent upon details in the tsunami warning. These safety zones extend from the surface of the water to the ocean floor.

(b) Regulations. When the safety zones are activated and, therefore, subject to enforcement, no person or vessel may enter or remain in the safety zone except for support vessels, support personnel, and other vessels authorized by the Captain of the Port, Sector Honolulu (COTP), or a designated representative of the COTP. All commercial vessels must evacuate the harbor and transit seaward beyond the 50 fathom (300 foot) curve. These commercial harbors will remain closed to all transiting vessels until the Captain of the Port Honolulu lifts the evacuation order. All other applicable regulations in 33 CFR 165 remain in effect and subject to enforcement. You may contact the Coast Guard on VHF Channel 16 (156.800 MHz) or at telephone number 808-842-2600 to obtain clarification on safety zone transits and locations. Coast Guard patrol boats will be

enforcing the safety zones and providing on-scene direction. Any vessel not capable of evacuating must contact the Coast Guard Sector Command Center at (808) 842-2601 to request a waiver from evacuating the harbor.

(c) Enforcement period. Paragraph (b) of this section will be enforced when a tsunami warning has been issued for the Hawaiian Islands. The COTP will notify the public of any enforcement through the following means to ensure the widest publicity: broadcast notice to mariners, notices of enforcement, press releases and the Coast Guard's Homeport web-site. Following the passage of the tsunami or tsunami threat and harbor assessments as required, de-activation of these safety zones will be conducted through radio broadcast by the U.S. Coast Guard.

(d) Penalties. Vessels or persons violating this rule would be subject to the penalties set forth in 33 U.S.C. 1232.

Dated: September 16, 2013

S. N. GILREATH
Captain, U.S. Coast Guard
Captain of the Port Honolulu

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